

HEADQUARTERS
UNITED STATES EUROPEAN COMMAND
UNIT 30400, BOX 1000
APO 09128-4209

DIRECTIVE
NUMBER 45-4

8 Jan 97

LEGAL

Administration of Military Justice

1. **Summary.** This directive prescribes policies and procedures for the administration of military justice in USEUCOM.

2. **Applicability.** This Directive applies to military personnel assigned or attached to HQ USEUCOM, including those permanent standing elements referred to herein or specifically made subject to this Directive by appropriate directive or order. Specifically, in addition to personnel assigned directly to HQ USEUCOM, this Directive is applicable to all Security Assistance Organizations (SAOs), Logistics Coordination Cells (ULCCs), U.S. military personnel assigned to the George C. Marshall European Center for Security Studies (the Marshall Center), Joint Analysis Center (JAC), the European Stars and Stripes (ESS), and Joint Task Forces (JTF) formed by or assigned to HQ USEUCOM.

3. **Internal Control Systems.** This Directive is not subject to requirements in ED 50-8, Internal Management Control Program.

4. **Suggested Improvement.** ECLA is the proponent for this Directive. Suggested improvements should be sent to: HQ USEUCOM, ATTN: ECLA, UNIT 30400, BOX 1000, APO AE 09128

5. **References.**

a. Title 10 U.S. Code, Uniform Code of Military Justice (UCMJ).

b. Manual for Courts-Martial, United States (1996 Edition).

c. DoD Directive 5132.3, DoD Policy and Responsibilities Relating to Security Assistance, 10 Mar 81.

d. DoD Directive 5505.6, Investigation of Allegations Against Senior Officials of the Department of Defense, 12 Jul 91.

e. JCS Pub 0-2, Unified Action Armed Forces, 24 Feb 95.

f. Navy JAGINST 5800.7C, Manual of the Judge Advocate General, as changed 6 Aug 92.

g. Air Force Instruction 51-202, Nonjudicial Punishment Guide, 1 Oct 96.

h. Army Regulation 27-10, Military Justice, 8 Sep 94, (Interim CH-1, 9 JAN 95).

i. CINCUSNAVEUR Instruction 5440.7, Administrative Organization for Navy Personnel Assigned to Unified and International Headquarters, 16 Oct 85.

j. USAREUR Regulation 27-10, Military Justice, 15 Aug 94.

6. **Explanation of Terms.**

a. Administrative Actions. Nonpunitive corrective measures which are imposed to further the efficiency of a service member and not imposed as punishment for a military offense. They include counseling, admonition, reprimand, nonpunitive censure, extra military instruction, withholding of privileges and other measures. Commanding Officers, Officers in Charge, Directors, Office Chiefs and Supervisors have authority to impose administrative actions in lieu of other

measures consistent with regulations of the Service Secretary concerned.

b. Collateral Administrative Actions. Actions necessitated by a commander's finding of misconduct, taken in accordance with the applicable

c. Directors and Office Chiefs. The heads of the HQ USEUCOM directorates, staff offices, and staff agencies. Directors and Office Chiefs are not the equivalent of commanding officers for military justice and administrative actions.

d. Personnel Assigned or Attached to HQ USEUCOM. All personnel permanently assigned or temporarily attached to HQ USEUCOM, including reservists, personnel in a temporary duty status (TDY) (see Service Regulations), liaison officers who function as integral part of HQ USEUCOM staff and personnel assigned or attached to the Marshall Center, SAOs or ULCCs.

e. Serious Misconduct. Whether misconduct is serious depends on several factors: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record and experiences; and the maximum sentence impossible for the offense if tried by general courts-martial. Ordinarily, serious misconduct includes offenses which, if tried by general courts-martial, could result in a maximum sentence including dishonorable discharge or confinement for longer than 1 year.

f. Service Unit Commanders. An Officer on the staff of a multiservice command designated by the Multiservice Commander (MSC), in writing in accordance with Service regulations, as Commanding Officer of a unit comprised of members of that Officer's Service for the purpose of exercising Article 15, UCMJ, authority. An MSC may designate one or more such units for each Service represented in the multiservice command. USCINCEUR will designate Service Unit Commanders as is deemed appropriate and consistent with regulations promulgated by the Service

regulations of the member's Service, such as reduction in pay grade, fines and forfeitures, revocation of drivers' licenses or security clearances, and the preparation of special performance/rating evaluations.

Secretaries concerned. Copies of these designations will be maintained in ECLA.

7. Policies.

a. HQ USEUCOM Personnel.

(1). Discipline of HQ USEUCOM personnel is normally a Service responsibility and will be administered in accordance with Service regulations of the member concerned. Within HQ USEUCOM nonjudicial punishment is normally administered by the Service Unit Commanders. In addition, cases may be referred to the appropriate Service component command for resolution. A list of Service Unit Commanders is available in ECLA. A list of NJP and courts-martial authorities for HQ USEUCOM personnel is set forth in Appendix A.

(2). Directors and Office Chiefs are empowered to impose administrative actions consistent with the regulations of the member's Service. Directors and Office Chiefs are not commanding officers under Service regulations.

(3). USCINCEUR retains the option to impose NJP on HQ USEUCOM personnel. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications. This authority is delegated to the principal assistant, the Chief of Staff (HQ USEUCOM/ECCS). Prior to imposition of NJP the Service Unit Commander shall consult with ECLA to determine if the conduct has a joint origin or joint force implications.

(4). USCINCEUR retains the option to exercise his authority as a General Court-Martial convening authority for HQ USEUCOM personnel. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications. Prior to referral, ECLA shall be consulted to

determine if the conduct has a joint origin or joint force implications.

b. SOCEUR Personnel. Pursuant to Reference e, the following policies are established:

(1). The SOCEUR Commander (COMSOCEUR) is responsible for the discipline of military personnel assigned to the SOCEUR.

(2). COMSOCEUR shall publish rules and regulations establishing uniform policies applicable to all Services' personnel within SOCEUR where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel and other matters COMSOCEUR deems appropriate.

(3). As a MSC, COMSOCEUR may designate Service Unit Commanders. COMSOCEUR, or designated Service Unit Commanders shall apply the regulations of the offender's Service when conducting NJP proceedings, including punishment, suspension, mitigation and filing. Appeals and other action, involving review of NJP imposed by COMSOCEUR, or Service Unit Commanders, will follow the appropriate regulation of the member's Service. Collateral processing (e.g., personnel and finance actions and unfavorable notations in selection records and personnel files) shall be accomplished within the Service channels of the member's Service.

(4). Discipline within SOCEUR will normally be exercised by the Service Unit Commanders. In addition, cases may be referred to an appropriate Service component command for resolution.

(5). COMSOCEUR retains the option to impose NJP on SOCEUR personnel. Generally this option will be exercised

when the misconduct arises from a joint origin or has joint force implications.

(6). In accordance with Article 23(a)(6) of Reference a, COMSOCEUR is a Special Court-Martial Convening Authority.

(7). Pursuant to RCM 201(e)(2)(A) and 201(e)(2)(C) of Reference b, COMSOCEUR is authorized to convene Special Courts-Martial and Summary Courts-Martial over members of any of the Armed Forces assigned to SOCEUR. Subject to the policies and provisions of this directive and unless specifically withheld by USCINCEUR, COMSOCEUR may exercise all disciplinary and administrative authority contained in Reference b, and in the applicable regulations of a member's Service. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications. Normally courts-martial will be referred to the appropriate servicing legal office for referral and disposition. COMSOCEUR may request that USCINCEUR request General Court-Martial Convening Authority for COMSOCEUR.

c. Joint Task Force (JTF) Personnel. Pursuant to Reference e, the following policies are established:

(1). The JTF Commander (COMJTF) is responsible for the discipline of military personnel assigned to the JTF.

(2). COMJTF shall publish rules and regulations establishing uniform policies applicable to all Services' personnel within the JTF where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel and other matters COMJTF deems appropriate.

(3). As a MSC, COMJTF may designate Service Unit Commanders. COMJTF, or designated Service Unit Commanders shall apply the regulations

of the offender's Service when conducting NJP proceedings, including punishment, suspension, mitigation and filing. Appeals and other action, involving review of NJP imposed by COMJTF, or Service Unit Commanders, will follow the appropriate regulation of the member's Service. Collateral processing (e.g., personnel and finance actions and unfavorable notations in selection records and personnel files) shall be accomplished within the Service channels of the member's Service.

(4). Discipline within a JTF will normally be exercised by the Service Unit Commanders. In addition, cases may be referred to an appropriate Service component command for resolution.

(5). COMJTF retains the option to impose NJP on JTF personnel. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications.

(6). In accordance with Article 23(a)(6) of Reference a, COMJTFs are Special Court-Martial Convening Authorities.

(7). Pursuant to RCM 201(e)(2)(A) and 201(e)(2)(C) of Reference b, COMJTFs are authorized to convene Special Courts-Martial and Summary Courts-Martial over members of any of the Armed Forces assigned to that JTF. Subject to the policies and provisions of this directive and unless specifically withheld by USCINCEUR, COMJTFs may exercise all disciplinary and administrative authority contained in Reference b, and in the applicable regulations of a member's Service. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications. Normally courts-martial will be referred to the appropriate servicing legal office for referral and disposition. COMJTFs may request that

USCINCEUR request General Court-Martial Convening Authority for COMJTFs.

d. SAO-ULCC Personnel. Pursuant to Reference c, the following policies are established:

(1). The SAO Chiefs are responsible for the maintenance of good order and discipline of all personnel within their organizations regardless of Service. They are responsible for ensuring that alleged offenses by personnel within their organizations are promptly reported to HQ USEUCOM and to any other appropriate organizations, and are responsible for taking appropriate corrective action within their authority.

(2). SAO Chiefs are empowered to impose administrative actions consistent with the regulations of the member's Service. SAO Chiefs are not commanding officers under Service regulations.

(3). If the SAO Chief determines that punitive action (e.g., courts-martial or NJP) is or maybe warranted, the case shall be referred to ECJ4, HQ USEUCOM, for further action in accordance with this Directive.

e. Joint Analysis Center (JAC) Personnel. Pursuant to Reference e, the following policies are established:

(1). The JAC Commander (COMJAC) is responsible for the discipline of military personnel assigned to the JAC.

(2). COMJAC shall publish rules and regulations establishing uniform policies applicable to all Services' personnel within JAC where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel and other matters COMJAC deems appropriate.

(3). As a MSC, COMJAC may designate Service Unit Commanders. COMJAC, or the designated Service Unit Commanders shall apply the regulations of the offender's Service when conducting NJP proceedings, including punishment, suspension, mitigation and filing. Appeals and other action, involving review of NJP imposed by COMJAC or Service Unit Commanders, will follow the appropriate regulation of the member's Service. Collateral processing (e.g., personnel and finance actions and unfavorable notations in selection records and personnel files) shall be accomplished within the Service channels of the member's Service.

(4). Discipline within the JAC will normally be exercised by JAC Service Unit Commanders. In addition, cases may be referred to an appropriate Service component command for resolution.

(5). COMJAC retains the option to impose NJP on JAC personnel. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications.

(6). In accordance with Article 23(a)(6) of Reference a, COMJAC is a Special Court-Martial Convening Authority.

(7). Pursuant to R.C.M. 201(e)(2)(A) and 201(e)(2)(c) of Reference b, COMJAC is authorized to convene Special Courts-Martial and Summary Courts-Martial over members of any of the Armed Forces assigned to JAC. Subject to the policies and provisions of this directive and unless specifically withheld by USCINCEUR, COMJAC may exercise all disciplinary and administrative authority contained in Reference b, and in the applicable regulations of a member's Service. Generally this option will be exercised when the misconduct arises from a joint origin or has joint force implications.

Normally courts-martial cases will be referred to the appropriate servicing legal office for referral and disposition.

f. European Stars and Stripes Personnel (ESS). Pursuant to Reference e, the following policies are established:

(1). The ESS Commander (COMESS) is responsible for the discipline of military personnel assigned to ESS.

(2). COMESS shall publish rules and regulations establishing uniform policies applicable to all Services' personnel within ESS where appropriate. Such rules and regulations will address, for example, hours and areas authorized for liberty, apprehension of service personnel and other matters COMESS deems appropriate.

(3). As a MSC, COMESS may designate Service Unit Commanders. COMESS, or designated Service Unit Commanders shall apply the regulations of the offender's Service when conducting NJP proceedings, including punishment, suspension, mitigation and filing. Appeals and other action, involving review of NJP imposed by COMESS, or Service Unit Commanders, will follow the appropriate regulation of the member's Service. Collateral processing (e.g., personnel and finance actions and unfavorable notations in selection records and personnel files) shall be accomplished within the Service channels of the member's Service.

(4). Discipline within the ESS will normally be exercised by Service Unit Commanders. In addition, cases may be referred to an appropriate Service component command for resolution.

(5). COMESS retains the option to impose NJP on ESS personnel. Generally this option will be exercised when the

misconduct arises from a joint origin or has joint force implications.

(6). In accordance with Article 23(a)(6) of reference a, COMESS is a Special Court-Martial Convening Authority. Authority to convene Special Courts-Martial and Summary Courts-Martial over members of any of the Armed Forces assigned to COMESS is not authorized. COMESS may request such authority from USCINCEUR if and when desired.

8. Procedures.

a. Report of Offense. Anyone who has information that an offense under the UCMJ may have been committed must promptly report it to the member's Commander, Director or Office Chief, who shall make preliminary inquiry or investigation as is warranted. Advice should be obtained from ECLA regarding the degree of investigation and procedures to be followed. Allegations of serious misconduct should be immediately referred to a criminal investigative service in accordance with paragraph g below.

b. Preliminary Inquiry. In cases requiring further investigation but not referral to a criminal investigative service, the Commander, Director, Office Chief, may detail an officer, senior to the accused, to conduct a preliminary inquiry. If no qualified officer is available, the matter will be reported to the Director, ECJ1, who shall designate an officer to be detailed as the preliminary inquiry officer. A sample memorandum appointing a preliminary inquiry officer is at Appendix B.

c. Conduct of Preliminary Inquiry. While the preliminary inquiry is informal, it must be thorough and impartial in developing evidence in the case, as well as any matters in extenuation and mitigation. The report of inquiry should include the written

statements of any witnesses and relevant documentary evidence (e.g., police reports, logs, receipts, vouchers, etc.). Additionally, unless the accused has already requested or retained an attorney, the inquiry officer should offer the accused an opportunity to make a statement for inclusion in the report, but only after advising the accused of his or her rights against self-incrimination. The form provided at Appendix D, or an equivalent form, should be used to record the giving of this advice. The inquiry officer must ascertain whether the accused has consulted and retained counsel. If an accused has retained counsel the inquiry officer may not question the accused. If there is any need to obtain information from the accused, the inquiry officer shall contact the accused's counsel. If at any time during an interview, an accused requests counsel, all questioning must cease and counsel must be made available to the accused. If an accused desires to consult with an attorney but one is not available in the area, ECLA shall be contacted for assistance in identifying an attorney. In the HQ USEUCOM area, Army, Navy, and Marine Corps accused who desire to consult with an attorney shall be referred to the Stuttgart Legal Service Center (4212-5671) for assistance; Air Force accused shall be referred to Area Defense Counsel at Ramstein AB (480-2182/2492). Navy and Marine Corps accused may also telephonically consult with an attorney at the Naval Legal Service Office, Europe (625-4512).

d. Preliminary Inquiry Report. The inquiry officer shall report findings and recommendations to the cognizant Commander, Director, Office Chief, who shall determine the appropriate action to be taken. Prior to determination, consultation with the Service Unit Commander and ECLA may be appropriate. A suggested format for a preliminary inquiry report is at Appendix C.

e. Further Processing. Should the Commander, Director, Office Chief, determine that punitive action may be warranted, the case shall be forwarded to the appropriate military justice authority. ECLA shall be consulted prior to forwarding the case.

f. Transfer of Personnel for Disciplinary Purposes. In some cases, particularly in more isolated locations, it may be necessary to temporarily transfer an individual to facilitate investigation and processing. In such cases, the Service component commander or cognizant GCM authority for the individual's Service may be requested to designate a receiving command where legal and investigatory resources are readily available.

g. Serious Misconduct. In all cases involving serious misconduct, great care must be taken to properly obtain and preserve evidence. In cases involving serious misconduct, HQ USEUCOM (ATTN: ECLA) shall be promptly notified, as well as the servicing criminal investigation office (i.e., CID, OSI, or NCIS). Individuals suspected of serious offenses may be transferred to another command of their own Service for further processing of the case.

h. Allegations Against Senior Officials. Allegations of misconduct by general/flag officers, Directors, or Office Chiefs, shall be reported immediately to the Chief of Staff, who shall direct the investigation and processing of the case consistent with this Directive. Investigations into serious misconduct alleged against general or flag officers, or civilians above grade GS/GM-15, must be reported to the DoD Inspector General via ECIG in accordance with Reference d.

i. Pretrial Restraint. RCM 304 and 305 of Reference b authorize

pretrial restraint. Pretrial restraint, as defined under RCM 304 of Reference b, includes moral or physical restraint on a person's liberty. Moral restraint would be an order directing a person to do, or refrain from doing, specific acts, or limiting a person's movement to or from certain areas. Physical restraint would include pretrial confinement. Importantly, all forms of pretrial restraint can significantly affect subsequent judicial actions. Accordingly, pretrial restraint of any sort shall be limited to the greatest extent possible. All forms of restraint shall be reported to ECLA, as soon as possible, but not later than 24 hours of the time restraint is imposed. Any pretrial confinement will be coordinated prior to imposition with ECLA. If such pre-coordination is not possible, ECLA will be informed as soon as possible, but not later than 24 hours of the time confinement is imposed. Pretrial restraint on enlisted personnel may be imposed by any commissioned officer. Pretrial restraint of officers or civilians can only be imposed by the commanding officer to whose authority the individual is subject.

j. Search Authority. A nonconsensual search of a person or place can only be conducted when authorized by a commanding officer or a military judge, or in certain limited circumstances when an officer, noncommissioned officer or military policeman determines that the exigencies of the situation, because of insufficient time, lack of means of communication or the presence of an operable vehicle, require a search without authorization from a commanding officer or military judge. Searches must be based upon probable cause, which is defined as a reasonable belief that a crime has been committed and evidence thereof is located in the place or on the person to searched. Whenever possible, a military attorney

should be consulted prior to search. The appropriate commanding officer to authorize a search is that officer in command who has control over the place where the property

or person to searched is found. No searches of property located off post may be authorized without coordination through CID, OSI or NCIS authorities. Noncompliance with the provisions of this Directive does not render an otherwise lawful search unlawful.

k. Funding. Expenses associated with courts-martial or administrative discharge boards will usually be funded in accordance with the service directives of the accused/offending service member. However, if USEUCOM must incur expenses in processing a disciplinary matter (e.g., TDY expenses for a preliminary inquiry officer, military counsel, witnesses, etc.), they shall be charged to a central account under the direction of the HQ EUCOM comptroller.

l. Minimizing Disclosure of Information. Reports of incidents and investigations of misconduct will be handled and transmitted in a manner which limits disclosure to personnel with an official need to know. Information and reports concerning alleged misconduct will normally be marked "FOR OFFICIAL USE ONLY." Use of "Eyes Only" messages may also be appropriate in some cases.

FOR THE COMMANDER IN CHIEF:

OFFICIAL:

DAVID L. BENTON, III
Lieutenant General, USA
Chief of Staff

SUSAN M. MEYER
LTC, USA
Adjutant General

Appendixes

- A - Jurisdiction for NJP and CMs of HQ USEUCOM Personnel
- B - Sample Preliminary Inquiry Officer Appoint Letter
- C - Sample Preliminary Inquiry Report

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D - Rights Advisement Form (DA 3881)

DISTRIBUTION:

P

APPENDIX A

This appendix lists the military justice jurisdiction for personnel assigned or attached to HQ USEUCOM. Jurisdiction for personnel assigned to other than HQ USEUCOM, including those assigned to SAOs, ULCCs, the Marshall Center, JAC, ESS, and JTFs will depend on the location of the command or office, as well as applicable Service regulations. ECLA should be consulted to determine jurisdiction in any particular case.

I. ARMY.

1. Officer, Warrant Officer, and Senior Non-commissioned Officers (E7 - E9)

- a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ4)
Service Component Commander (21st TAACOM)
- b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (21st
TAACOM)
- c. GCM: Joint Commander (CINC)
Service Component Commander (21st TAACOM)

2. Enlisted (E6 - E1)

- a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ1-PA)
Service Component Commander (6th ASG)
- b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (6th ASG)
- c. GCM: Joint Commander (CINC)
Service Component Commander (21st TAACOM)

II AIR FORCE

1. Officers and Senior Non-commissioned Officers (E7 - E9)

a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ5)
Service Component Commander (86th Airlift Wing)

b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (86th Airlift Wing)

c. GCM: Joint Commander (CINC)
Service Component Commander (3 AF)

2. Enlisted (E6 - E1)

a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ5)
Service Component Commander (Joint Support Squadron)

b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (86th Airlift Wing)

c. GCM: Joint Commander (CINC)
Service Component Commander (3 AF)

III. NAVY

1. Officers, Warrant Officers, and Senior Non-commissioned Officers (E7 - E9)

a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ3)
Service Component Commander (COMNAVACTS UK)

b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (COMNAVACTS UK)

c. GCM : Joint Commander (CINC)
Service Component Commander (COMNAVACTS UK)

(Cont)

2. Enlisted (E6 - E1)

- a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (ECJ33)
Service Component Commander (COMNAVACTS UK)
- b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (COMNAVACTS UK)
- c. GCM: Joint Commander (CINC)
Service Component Commander (COMNAVACTS UK)

IV. MARINE CORPS

1. Officer, Warrant Officer, and Senior Enlisted (E7 - E8)

- a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (Deputy ECJ3)
Service Component Commander (MARFOREUR)
- b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (MARFOREUR)
- c. GCM: Joint Commander (CINC)
Service Component Commander (MARFOREUR)

2. Enlisted (E6 - E1)

- a. NJP: Joint Commander (CINC delegated to ECCS)
Service Unit Commander (Deputy ECJ3)
Service Component Commander (MARFOREUR)
- b. SCM/SPCM: Joint Commander (CINC)
Service Component Commander (MARFOREUR)
- c. GCM: Joint Commander (CINC)
Service Component Commander (MARFOREUR)

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APPENDIX B

Sample Memorandum Appointing Preliminary Inquiry Officer

FOR OFFICIAL USE ONLY

ECJX

MEMORANDUM FOR Major John E. Doe, U.S. Army

SUBJECT: Preliminary Inquiry into the Alleged Misconduct of SGT William E. Smith, U.S. Army

1. References.

- a. Manual for Courts-Martial, United States, 1984, Rule 303, Preliminary Inquiry into Reported Offenses.
- b. USEUCOM ED 45-2, Administration of Military Justice.

2. You are appointed to conduct a preliminary inquiry, in accordance with references a and b, into the allegations that SGT William E. Smith, USA, was disrespectful to his superior officer, Captain Jones, USA, on or about 1000, 8 January 1995, and that he was absent from his place of duty, to wit: the ECJX Operations Division Office from 0800 until 1000, 8 January 1995.

3. Your inquiry should gather all reasonably available evidence bearing on the guilt or innocence of SGT Smith and any evidence relating to aggravation, extenuation, or mitigation. You will report to me not later than 16 January 1995 your findings of fact, opinions, and recommendations regarding what further actions, if any, should be taken, including any recommended administrative or disciplinary action.

4. You should offer SGT Smith the opportunity to make a statement but only after properly advising him of his right against self-incrimination, using the enclosed form. Should Sgt Smith desire to consult with an attorney, he should be referred to the Stuttgart Legal Service Center, phone: 4212-5671. Air Force personnel should be referred to the Area Defense Counsel at Ramstein AB (DSN 480-2182/5671).

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5. You may obtain legal advice in connection with conducting your inquiry from the HQ USEUCOM Legal Advisor's Office, 430-7263/7325. Administrative support is available from the ECJX Admin Office.

Encl

Rights Acknowledgment Form

ROBERT T. WILLIAMS

Colonel, USAF

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Director

CF:
ECLA
ECJ1-PA

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APPENDIX C

Sample Preliminary Inquiry Report

FOR OFFICIAL USE ONLY

ECJX-YZ

MEMORANDUM FOR Director, ECJX

SUBJECT: Preliminary Inquiry into the Alleged Misconduct of SGT William E. Smith, U.S. Army

1. Reference memorandum, Director, ECJX, 9 Jan 95, subject as above.
2. Preliminary Statement. As directed by the reference, I conducted a preliminary inquiry into the allegations of misconduct by SGT Smith. The statements of witnesses are attached as enclosures 1 through 4, as well as a statement by SGT Smith and his rights acknowledgment form, enclosures 5 and 6. SGT Smith consulted with an attorney prior to making a statement. I have also attached a letter of instruction, enclosure 7, previously issued to SGT Smith by the Director, ECJX, and a proposed report of offenses, enclosure 8, to initiate disciplinary action.
3. Findings of Fact.
 - a. SGT Smith was required to be at his place of duty, the ECJX Operations Division Office, by 0800, 8 January 1995 (enclosures 1 and 2).
 - b. SGT Smith did not report to the Operations Division Office until 1000 on 8 January 1995 (enclosures 1,2, and 3).
 - c. When he arrived the morning of 8 January, SGT Smith appeared unsteady, had bloodshot eyes, and there was a smell of alcohol on his breath (enclosures 1 and 2).
 - d. When Captain Jones asked SGT Smith why he was late, SGT Smith smashed his fist down on a desk and responded in a loud voice that it was "none of your god damn business" (enclosures 1 and 2).
 - e. SGT Smith has been two to three hours late for work on at least four occasions over the past three weeks. Each time he has arrived late, the smell of alcohol on his breath was detected (enclosures 1,2 and 3).

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ECJX-YZ

SUBJECT: Preliminary Inquiry into the Alleged Misconduct of SGT William E. Smith, U.S. Army

- f. SGT Smith has been counseled both verbally, and by letter of instruction, regarding his tardiness for work (enclosures 4 and 7).

g. SGT Smith admitted to being late on 8 January and on previous occasions. He indicated that he and his wife have been arguing a lot lately, and this has kept him up late on a number of occasions. He claims to have a number of unpaid bills. He denies that he has trouble controlling his use of alcohol. He does not recall having sworn at Captain Jones or of being disrespectful to him (enclosure 5).

4. Opinions.

- a. SGT Smith was absent from his place of duty, without authority, from 0800 until 1000 on 8 January 1995.
- b. SGT Smith was disrespectful to his superior commissioned officer, Captain Jones, on or about 1000, 8 January 1995.
- c. SGT Smith may be suffering from alcohol abuse.
- d. Previous counseling and the letter of instruction have proven ineffective in improving SGT Smith's behavior.

5. Recommendations.

- a. Refer this case to the Army Service Unit Commander to be handled under Article 15, UCMJ; or, NJP is not recommended, recommend appropriate administrative actions.

8 Encls

- 1. Statement of CAPT Jones
- 2. Statement of SFC Ramos
- 3. Statement of Mrs Allen
- 4. Statement of LTC Brown
- 5. Statement of SGT Smith
- 6. Rights Acknowledgment Form
- 7. Director, ECJX, Letter of Instruction, 29 Dec 94
- 8. Report of Offense

JOHN E. DOE
Major, USA